

212-350 3300  
286-6268



# MANUFACTURERS HANOVER LEASING CORPORATION

RECORDATION NO. 13561 Filed 1/25

270 PARK AVENUE, NEW YORK, N.Y. 10017

FEB 22 1982-3 25 PM

February 18, 1982

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 13561 Filed 1/25  
FEB 22 1982-3 25 PM  
INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission  
Interstate Commerce Building  
12th and Constitution Avenue, N.W.  
Washington, D.C. 20423

RECORDATION NO. 13561 Filed 1/25  
FEB 22 1982-3 25 PM  
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Dear Sir:

INTERSTATE COMMERCE COMMISSION  
100 Washington, D.C.

I enclose for recordation, pursuant to Section 20(c) of the Interstate Commerce Act, two executed originals of a Loan and Security Agreement consisting of (i) a typed document bearing such title; and (ii) Schedule A thereto, between Manufacturers Hanover Leasing Corporation, 270 Park Avenue, New York, N.Y. 10017 ("MHLC"), and Race Leasing Company, 3662 Westchase, Houston, Texas 77042, as Debtor, and two certified copies of a Lease Agreement consisting of (i) a typed document bearing such title; (ii) Schedule I thereto; and (iii) Rider A between Race Leasing Company, as Lessor, and LCP Transportation, Inc., Raritan Plaza II, Raritan Center, Edison, New Jersey 08857, as Lessee.

The transaction represented by the foregoing is a loan by MHLC to Race Leasing Company, which loan is secured by the assignment to MHLC of the Lease referred to above, pursuant to which the following items of equipment are being leased by Race Leasing Company to LCP Transportation, Inc.:

Three (3) new caustic soda railroad tank cars with 16,000 gallon capacity, Tank Car Nos. UTLX 66497, UTLX 66498, UTLX 66499, manufactured by Union Tank Car Company.

Please return one copy of each of the Loan and Security Agreement (with Schedule A) and the Lease Agreement (with Schedule I and Rider A) to me showing the ICC's Recordation Date and Recordation Number. For your convenience I have enclosed a self-addressed stamped envelope for return of the documents.

I also enclose the check of MHLC in the amount of \$50.00 in payment of ICC fees.

Very truly yours,

Manufacturers Hanover  
Leasing Corporation

*Peter W. Sturtz*  
Peter W. Sturtz  
Vice President

BY FEDERAL EXPRESS

*Charles Verputt - Dan H. Sturtz  
Vice President, B. Hanover &  
Vice President, B. Hanover*

LEASE AGREEMENT

FEB 22 1982 - 3 35 PM

INTERSTATE COMMERCE COMMISSION

LEASE AGREEMENT made on this 1st day of September, 1981, between Race Leasing Company, an Ohio Partnership with offices at 3662 Westchase, Houston, Texas (hereinafter called Lessor) and LCP Transportation, Inc., (hereinafter called Lessee).

I.  
LEASE AGREEMENT

The Lessor leases to the Lessee, and the Lessee rents from the Lessor, the machinery and equipment, hereinafter referred to collectively as Equipment, described in Schedule 1, attached hereto, together with any additional items of Equipment described in additional Schedules, numbered consecutively, which may hereafter be attached hereto or incorporated herein by reference, upon the terms and conditions set forth in this agreement as supplemented, with respect to the Equipment by the terms and conditions set forth in the appropriate Schedule identifying such Equipment.

Except as specifically modified all of the terms and conditions of this agreement shall govern the rights and obligations of the Lessor and the Lessee.

Whenever reference is made herein to the agreement, it shall be deemed to include, as required, the various Schedules identifying the Equipment.

II.  
DELIVERY AND ACCEPTANCE

Acceptance of the Equipment by the Lessee shall be deemed to have occurred on the delivery date specified in the Schedule identifying the Equipment. Acceptance of the Equipment by the Lessee shall constitute an acknowledgment that:

- (a) The Equipment is in good order and condition and of the manufacture, design, and capacity selected by the Lessee;
- (b) The Lessee is satisfied that the same is suitable for the purposes ordered; and
- (c) That the Lessor has made no representation or warranty, express or implied, with respect to the Equipment.

The Lessor agrees to assign all of its rights under any vendor's or manufacturer's warranty on the Equipment and will cooperate with the Lessee in enforcing the same.

III.  
TERM

The lease for the Equipment shall commence on the date set forth in Schedule I and shall continue for the period specified in Schedule I under the terms and conditions set forth in this agreement.

#### IV. RENTAL PAYMENTS

The first rental payment shall begin October 1, 1981, and continue and be due and payable the first day of each month thereafter.

The Lessee will pay the Lessor, as rental for the use of the Equipment, monthly payments in advance during each month of the lease term for such item, such amount as is set forth in Schedule I.

Rent shall be paid to the Lessor at its offices as set forth above or at such other place as may be directed by the Lessor in writing.

#### V. TITLE TO EQUIPMENT

(a) The Equipment shall at all times be the sole and exclusive property of the Lessor and the Lessee shall not have any rights or property interest therein.

(b) The Lessee may not assign any right in or interest to the Equipment or permit any lien or encumbrance to exist thereon other than liens and encumbrances placed thereon by the Lessor or persons claiming against the Lessor.

(c) The Equipment shall at all times remain personal property, however they may be affixed to the realty.

(d) The Lessor shall be permitted to display notice of its ownership by affixing to the Equipment an identifying stencil, plate, or any other indicia of ownership.

#### VI. USE

(a) The Equipment shall be used as Rolling Stock of Lessee throughout the United States and Canada.

(b) The Lessee will not use, maintain, or store the Equipment improperly, carelessly, or in violation of this agreement or of any applicable regulatory laws or regulations of any governmental agency.

(c) The Equipment shall be operated by competent and qualified personnel in the manner and for the use contemplated by its manufacturer.

#### VII. INSPECTION AND RETURN

(a) The Lessor shall have the right, upon reasonable prior notice to the Lessee and during the Lessee's regular business hours, to inspect the Equipment.

(b) Upon the termination of the lease with respect to the Equipment, such item shall be returned at the Lessee's expense to any place within a radius of 100 miles of Houston, Texas, unless Lessee shall purchase the equipment as provided for herein.

VIII.  
MAINTENANCE AND REPAIR

(a) The Lessor will pay all installation costs with respect to the Equipment. The Lessor will maintain the Equipment and all additions, attachments, accessories thereto in good mechanical condition and working order at all times but shall not be responsible for normal wear and tear, or depreciation.

(b) In addition, if any part or accessory of the Equipment shall from time to time become worn out, lost, destroyed, damaged beyond repair or otherwise rendered unfit for use, the Lessee, at its own expense, shall within a reasonable time, replace or cause to be replaced such part or accessory. All such replacement parts and accessories shall immediately become the property of the Lessor for all purposes, but the parts or accessories replaced shall belong to the Lessee.

(c) The Lessee may from time to time add further parts or accessories to the Equipment, provided such addition does not affect or impair the value or utility of the Equipment. Any part or accessory so added, if not required as a replacement under subdivision (b) above, shall remain the property of the Lessee and may be removed at any time prior to the expiration of the lease term of such item, provided such removal does not affect or impair the value or utility of the Equipment. Any parts or accessories not so removed shall become the property of the Lessor.

IX  
RISK OF LOSS AND INSURANCE

(a) All risk of loss or damage to the Equipment shall be borne by the Lessee.

(b) The Lessee shall, at its own expense keep the Equipment insured, at its full value, against fire, theft, damage, or destruction and for product liability and public liability risks in such amounts as the Lessor may reasonably require and with insurance carriers qualified to do business in the state in which the Equipment is located, with losses, if any, payable to the Lessor. The Lessee shall deliver to the Lessor the policies or evidence of insurance satisfactory to the Lessor. The failure of the Lessee to secure or maintain such insurance shall constitute a breach under this agreement and the Lessor may, but shall not be obligated to effect such insurance, the cost of such insurance being deemed additional rent to be paid forthwith by the Lessee.

X.  
DAMAGE TO EQUIPMENT

Notwithstanding the loss, theft, destruction, or damage of the Equipment, the monthly rental for such item shall continue to be paid by the Lessee. In every such instance, the Lessor shall assign to the Lessee any and all rights the Lessor may have under insurance policies carried by the Lessor or the Lessee with respect to such damage, as well as any rights the Lessor may have to be reimbursed for such damage pursuant to insurance coverage carried by others.

XI.  
DESTROYED OR STOLEN EQUIPMENT

Should the Equipment be destroyed, stolen, or damaged to such extent that the Lessee finds it undesirable or impossible to continue its use, the Lessee shall forthwith pay the remaining unpaid rental payments as to the Equipment and all of the Lessor's right, title, and interest in the Equipment, together with any and all rights it may have with respect to the Equipment under insurance carried pursuant hereto by the Lessee, as well as any and all rights of the lessor under insurance carried by others, shall be assigned to the Lessee upon such payment by the Lessee.

XII.  
TAXES AND LICENSES

The Lessee shall pay all license fees, sales taxes, use taxes, excise taxes, personal property taxes, assessments, ad valorem taxes, stamp and documentary taxes, and all other governmental charges, fees, fines, or penalties whatsoever, whether payable by the Lessor or the Lessee or others, on or relating to the Equipment or the use, registration, rental, shipment, transportation, delivery, or operation thereof, other than federal or state income and franchise taxes of the lessor, and on or relating to this agreement and any Schedules executed in connection with this agreement, and shall file all returns required therefor and furnish copies thereof to the Lessor. Upon demand, the Lessee shall reimburse the Lessor for any such taxes, assessments, charges, fines, or penalties which the Lessor may be compelled to pay in connection with the Equipment. The Lessor will cooperate with the Lessee and furnish the Lessee with any information available to the Lessor in connection with the Lessee's obligations under this paragraph.

XIII.  
LESSOR'S INDEMNITY

(a) The Lessee shall indemnify, protect, and hold harmless the Lessor, its agents, servants, successors, and assigns from and against all losses, damages, injuries, claims, demands, and expenses, including legal expenses, of whatsoever nature, arising out of the use, condition (including, but not limited to, latent and other defects and whether or not discoverable by it), or operation of the Equipment, regardless of where, how, and by whom operated; or, if the Lessee is in default hereunder, arising out of or resulting from the condition of the Equipment sold or disposed of after use by the Lessee.

(b) The Lessee shall assume the settlement of, and the defense of any suit or suits or other legal proceedings brought to enforce, all such losses, damages, injuries, claims, demands, and expenses, and shall pay all judgments entered in any such suit or suits or other legal proceedings.

(c) The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the termination of this agreement, whether by expiration of time, by operation of law, or otherwise.

(d) The Lessee is an independent contractor and nothing contained in this agreement shall authorize the Lessee or any other person to operate the Equipment so as to incur or impose any liability or obligation for or on behalf of the Lessor.

XIV.  
ASSIGNMENT AND SUBLEASE

The Lessee may not sublet the Equipment, except to any of its present or future subsidiaries or affiliated companies, but every such sublease shall be subject to the terms of this agreement and shall in no event relieve the Lessee of its obligations hereunder. Except as provided in paragraph 15, neither party shall assign this agreement without the written consent of the other party, or without the written consent of the assignee to whom an approved assignment has been made.

XV.  
ASSIGNMENT BY LESSOR TO BANK

For the purpose of providing funds for financing the purchase of the Equipment hereunder, or for any other purpose, the Lessor may, without notice, assign all its right, title, and interest in and to the Equipment and moneys due and to become due to the lessor hereunder to any banking institution authorized to do business in any state of the United States. In such event, all the provisions of this agreement for the benefit of the Lessor shall inure to the benefit of and may be exercised by or on behalf of such banking institution, and all rental payments due and to become due under this agreement and assigned to such banking institution shall be paid directly to such banking institution, and the right of such banking institution to the payment of assigned rentals hereunder shall not be subject to any defense, counterclaim, or setoff which the Lessee may have against the Lessor, but shall be limited to any defense the Lessee or the Lessor may have against such banking institution.

XVI.  
LESSOR'S WARRANTIES

As to the Equipment to be leased hereunder, the Lessor warrants that:

- (a) . It is and will be the sole and absolute owner thereof;
- (b) It has the right to lease the same to the Lessee;
- (c) The same is free of all encumbrances at the time of delivery to the Lessee (except a lien, or security interest, if any, given or hereafter given to a banking institution or the vendor of the equipment);
- (d) The Lessor will keep the Equipment free of all other liens, security interests, and encumbrances;
- (e) It will not sell, assign (except to such banking institution), lease, or otherwise dispose of the same; and
- (f) It will do nothing to disturb the Lessee's full right of possession and enjoyment thereof and the exercise of all of the Lessee's rights with respect thereto as provided by this agreement.

XVII.  
LESSOR'S DEFAULT

Should the Lessor fail or be unable to perform its obligations hereunder; or should the Lessor's interest in any item of the Equipment be levied upon, or taken in execution, or subjected to encumbrances other than permitted by paragraph 15; or should the Lessor

become insolvent or bankrupt or make an assignment for the benefit of creditors or consent to the appointment of a trustee or a receiver, or a trustee or receiver is appointed for the Lessor or a substantial part of its property without its consent, or if bankruptcy, reorganization, arrangement, insolvency, or liquidation proceedings are instituted by or against the Lessor, then, and in such event, the Lessee shall have the option, either:

- (a) To terminate this agreement and to purchase all the Equipment leased hereunder upon payment of the balance of all rentals payable hereunder; or
- (b) Notwithstanding such default or insolvency, to continue rental payments until the expiration of the term of the Equipment.

The Equipment shall, upon full payment under option (a), become the Lessee's property without further payment or cost. In such event, the Lessor shall execute such assignment or other documents as may be required to transfer all right, title, or interest therein to the Lessee.

#### XVIII. LESSEE'S DEFAULT

(a) Time is of the essence under this agreement and any of the following events shall constitute defaults on the part of the Lessee hereunder:

- (1) The failure of the Lessee to pay any installment of rental within 15 days after the date on which the same shall become due;
- (2) Any breach or failure of the Lessee to observe or perform any of its other obligations hereunder and the continuance of such default for 15 days after notice in writing to the Lessee of the existence of such default;
- (3) The insolvency or bankruptcy of the Lessee or the making by the Lessee of an assignment for the benefit of creditors, or the consent of the Lessee to the appointment of a trustee or receiver, or the appointment without its consent, of a trustee or receiver for the Lessee or for a substantial part of its property;
- (4) The institution by or against the Lessee of bankruptcy, reorganization, arrangement, or insolvency proceedings.

(b) Upon the occurrence of any such default, the Lessor may at its option and without notice to or demand on the Lessee:

- (1) Declare this agreement in default and thereupon all Equipment and all rights of the Lessee therein shall be surrendered to the Lessor.
- (2) By its agents, take possession of the Equipment wherever found, with or without process of law, and for this purpose may enter upon any premises of the Lessee without liability for suit, action, or other proceeding by the Lessee and remove the same.
- (3) Hold, use, sell, lease, or otherwise dispose of the Equipment or keep the Equipment idle if the Lessor so chooses, without affecting the obligation of the Lessee as provided in this agreement.

(c) If the Lessee fails to surrender the Equipment as provided in subdivision (b) above, or converts or destroys the Equipment, the Lessor may hold the Lessee liable for a sum equal to all of the rental due and to become due under this agreement for the Equipment, which the Lessee shall forthwith pay the Lessor.

(d) With respect to the Equipment returned to the Lessor or repossessed by the Lessor, the Lessor shall be entitled in addition to the net amounts realized by the lessor through the sale, lease, or other disposition thereof, to all gains and all profits prevented, or damages sustained, including its claim in any insolvency proceedings, as follows:

- (1) All sums due and unpaid; and
- (2) All sums to become due as rentals to the end of the respective rental periods of the Equipment, had they not been terminated by the Lessor, less the rental or other value thereof which the parties agree shall be 50% of such sums to become due to the end of the respective rental periods.

The parties acknowledge that in determining these liquidated damages they have considered the Lessor's investment, the uncertainties of leasing to others, the cost incurred while the Equipment may remain idle, or if the same are sold, the uncertainty of the sale price, the commissions and legal and other expenses of sale, and the parties have also given due consideration in calculating such liquidated damages to any savings resulting from the fact that the Lessor need no longer furnish any services to the Lessee hereunder. Should the Lessor, however, estimate its actual damages to exceed the amount above set forth, the Lessor may, at its option, take such steps as it deems advisable to establish its actual damages in lieu of its reliance upon this provision for liquidated damages. Any repossession or resale of the Equipment shall not bar an action for a deficiency as above provided, and the bringing of an action or the entry of judgment against the Lessee shall not bar the Lessor's right to repossess the Equipment.

#### XIX. INVALID PROVISION

Any provision of this agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the rest of this agreement.

#### XX. CONSTRUCTION

The validity, construction, and enforcement of this agreement shall be governed by the laws of the state of Texas.

#### XXI. COMPLETE AGREEMENT

This agreement and the Schedules executed by the parties contain the entire understanding of the parties, and such understanding may not be modified or terminated except in writing signed by the parties and by any proper sublessee or assignee.

#### XXII. OPTION TO PURCHASE

The Lessee shall have the option to purchase Equipment at the expiration of the Lease Term upon giving 90 days' notice to the Lessor and upon paying the full purchase



price in cash or by certified check within such 30 day period. The purchase price shall be ten percent (10%) of the original lease value. Upon the receipt of such payment, the Lessor shall deliver to the Lessee a duly executed bill of sale of the Equipment with full warranties.

IN WITNESS WHEREOF the Lessor and the Lessee have caused these presents to be duly executed.

LESSOR:

RACE LEASING COMPANY,  
A PARTNERSHIP

BY:

W Eliskey

TITLE: Partner

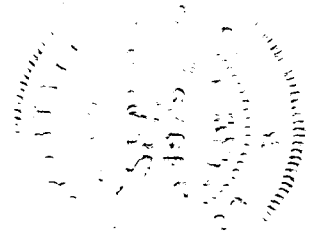
LESSEE:

LCP TRANSPORTATION, INC.

BY:

WC Calvert

TITLE: President



SCHEDULE I

<u>Term</u>	<u>First Rental Payment Due</u>	<u>Rental Amount</u>
84 months	October 1, 1981	\$5,133.00 per month

DESCRIPTION OF EQUIPMENT

Three (3) new caustic soda rail road tank cars with 16,000 gallon capacity, Tank Car Nos. UTLX 66497, UTLX 66498, UTLX 66499, manufactured by Union Tank Car Company.

CERTIFICATE  
RE LEASE AGREEMENT  
BETWEEN RACE LEASING COMPANY  
AND LCP TRANSPORTATION, INC.

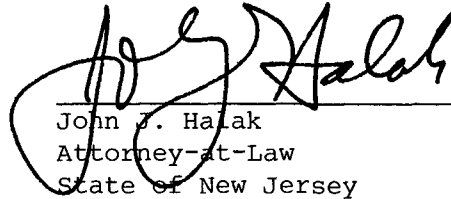
The undersigned partners Race Leasing Company, an Ohio general partnership (the "Partnership"), DO HEREBY CERTIFY that attached hereto is a true and complete copy of the Lease Agreement with Schedule I and Rider A between the Partnership, each page of each of which has been compared with the original thereof, and that said documents are in full force and effect on the day hereof, without amendment or modification thereof.

IN WITNESS WHEREOF, the undersigned have hereunto subscribed their names this 28th day of January, 1982.

  
\_\_\_\_\_  
W.E. ASKEY

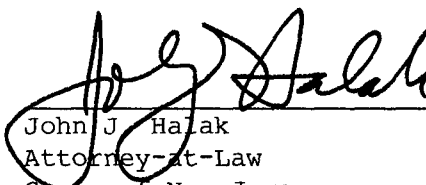
State of New Jersey  
County of Middlesex

On the 11th day of February, 1982 before me personally appeared W. C. Calvert, Jr., to me personally known, who being by me duly sworn, says that he is the President of LCP Transportation, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
\_\_\_\_\_  
John J. Halak  
Attorney-at-Law  
State of New Jersey

State of New Jersey  
County of Middlesex


On the 11th day of February, 1982, before me personally appeared  
W. E. Askey to me known to be the person described  
in and who executed the foregoing instrument and he acknowledged  
that he executed the same as his free act and deed.

  
\_\_\_\_\_  
John J. Halak  
Attorney-at-Law  
State of New Jersey

STATE OF TEXAS     )  
                              ) ss.:  
COUNTY OF HARRIS )

On this Twenty - Ninth (29th) day of January, 1982, before me personally appeared John W. Bourgault, to me personally known and being by me duly sworn says he is the Vice President of Manufacturers Hanover Leasing Corporation, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Seal)

  
Sherry Wadham  
Notary Public

My commission expires: 7/30/85